
(1985) 09 RAJ CK 0018

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No's. 8 and 9 of 1982

State of Rajasthan and Others

APPELLANT

Vs

Smt. Shankuntla and Others

RESPONDENT

Date of Decision : 03-09-1985

Acts Referred:

Citation : (1985) WLN 337

Hon'ble Judges : Pana Chand Jain, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Panna Chand Jain, J.—As a result of motor accident that happened on 23rd March, 1979 at about 9.50 P.M. claimants Cpt. Gunwant Singh and his wife Smt. Shakuntla sustained injuries. They filed separate claims petitions before the Accident Claims Tribunal, the Tribunal awarded claim of Cpt. Gunwant Singh to the extent of Rs. 26,000/- and claim of Smt. Shakuntla was allowed to the extent of Rs. 22,000/-. Though, two separate claims petitions were filed but the learned Claims Tribunal disposed of the case by one single order.

2. Aggrieved by the Award dated 16-10-1981 passed by the Claims Tribunal, two separate appeals have been filed by the State. As the driver of the Jeep was in the employment of the State. The two appeals have been registered as S.B. Civil Misc. Appeals No. 8/82 and 9/82. The claimants have also filed cross-objections for enhancing the amount of compensation. The aforesaid two appeals and the cross-objections are being disposed of by this "judgment as they are arising out of one order passed by the Claims Tribunal.

3. Briefly the facts of the case are that on 23-3-1979 at about 9.50 PM the claimant Cpt. Gunwant Singh was going towards Jalorigate from the side of Sophiya School and Khatarnak Puliya and when he reached near the Chouraya of "C"-Road of Sardarpura on Harish Marg, one Jeep RSS 4734 which was driven by the Respondent Ugam Singh collided with his Scooter Due to the accident, Cpt.

Gunwant Singh and his wife received injuries. His wife was accompanied with him on the Scooter. It was alleged by the claimants that Ugam Singh, the Driver of the jeep, was driving the jeep rashly and negligently and without giving side on Chouraha and without sounding any horn, he took sudden turn towards right and in doing so he dashed with the scooter. The report of the Accident was lodged on 23rd March 1979 at Police Station Sardarpura by Man Singh PW 6. He took the injured claimants to M.G. Hospital. The jeep belongs to the Medical and Health Department of the Government of Rajasthan.

4. The claimant Cpt. Gunwant Singh alleged that he is in service of military and on account of his meritorious service in the "Indo-Pak" war, he was awarded special medal, and, due to the accident, his future chances of promotions are greatly affected. He claimed Rs. 1,99,000/- for future loss of promotion and physical, mental agony and also claimed Rs. 1,000/- for damage caused to Scooter. He preferred a claim of Rs. 2,00,000/- against the appellants.

5. Smt. Shankutla, the other claimant claimed a sum of Rs. 50,000/-. She alleged that she is in service as Lecturer in Savatri Girls College, Ajmer, and, on account of accident, she had to remain on leave without pay for complete one year. She claimed a sum of Rs. 12,000/- as a loss of salary and also claimed Rs. 38,000/- on account of injuries mental and physical agony. The appellants contested their claims by denying the facts mentioned in the claims petition. It was alleged that the accident took place on account of negligence of Cp. Gunwant Singh. It was also contended that the jeep was being used in the discharge of sovereign function and as such the State was not liable to pay any compensation. The claimants of the both the cases examined themselves as PW 1 and PW 2. They also examined PW 3 Anand Kumari, PW 4 Lt. Gen. B. Sinha, PW 5 Verendra Singh PW 7 Lt. Col. Naiyer and PW 8 Jaswant Singh, and, in rebuttal the State examined Ugam Singh, the driver of the jeep and no other evidence was produced by the State. Claimants filed number of documents. The relevant documents for the purposes of the appeal are Ex. 1 which is certified copy of First Information Report, Ex. 5 is the Injury Report of Cpt. Gunwant Singh Rathore, Ex. 6 is proceeding of the Medical Board, Ex. 7 is also the proceeding of the Medical Board, Ex. 9 is the site-plan and Ex. 10 is the Mechanic Report. The learned Claims Tribunal after appreciating the entire evidence on record held that the Accident took place on account of rash and negligent act of the driver of the jeep and over ruling all other contentions of the State, allowed the claim of Cpt. Gunwant Singh to the extent of Rs. 25,000/- as compensation for pains and sufferings and also towards general damages, and allowed Rs. 1,000/- for damages caused to Scooter. The other claimant Smt. Shakuntla was given compensation amounting to Rs. 22,000/-; Rs. 12,000/- against the loss of salaries and Rs. 10,000/- against the pains and sufferings.

6. Shri Rajendra Prasad Vyas Dy. Govt. Advocate appearing on behalf of the appellants submitted that the learned Tribunal gravely erred in allowing that the accident in question was caused on account of rash and negligent driving by the

driver of the jeep. He has submitted that the witness Anand Kumari and Man Singh are got up witnesses and as such no reliance should have been placed by the Tribunal on their testimony. He has also further submitted that from the statement of Ugamsingh PW 1 it is established that as soon as Scooter collided with the jeep, the jeep stopped there and then, From this, he wants to infer, had the jeep been in high speed then the question of stopping of jeep would not have arisen. On the other hand Shri N.P. Gupta, learned counsel for the claimants submitted that the finding arrived at by the learned Tribunal with regard to negligence on the part of the Driver of the jeep is perfectly correct and based on evidence or" the claimants.

7. I have given my thoughtful consideration and perused the record. I am in agreement with the finding recorded by the learned Tribunal on this issue and concurring with the finding of the learned Tribunal held that the accident was caused by rash and negligent driving by the driver of the jeep.

8. With regard to quantum of compensation the learned counsel for the appellants submitted that the amount of compensation awarded in the case to both the claimants is not based on evidence and the finding arrived at by the learned Tribunal, is based on permises and conjuctures. The contention of the learned counsel is that there is absolutely no evidence on record to prove that Smt. Shakuntla remained on leave without pay for a period of one year. He also submitted that award of Rs. 10,000/- on account of pains and sufferings is also based on sermises if not it is on higher side. Shri Gupta, learned counsel for the claimant submitted that there is clear statement of Smt. Shakuntla on the record that she remained on leave for a period of one complete year and as she was drawing a salary of Rs. 1,000/- per month, Award of the claims Tribunal for a sum of Rs. 12,000/- is very much justified and based on evidence on record. I am in agreement with the contention of the learned counsel that in the absence of any rebuttal, the Tribunal was justified in believing her statement and recording the finding which cannot be assailed. As regards compensation on account of pains and sufferings, it has come in the evidence of Smt. Shakuntla that she received number of injuries. Her rib was broken. There was also fracture in the bone of her right hand thumb. She also received injuries on her head and four stitches were made on it. On account of the accident, she received abrasions on her face also. She has also stated that she remained in the hospital for 22 days. In the facts and circumstances of the case, if a sum of Rs. 10,000/- was awarded on account of pains and sufferings there appears to be a cogant reason in awarding compensation by the learned Tribunal. As the award is fair and reasonable, the question of enhancement of compensation does not arise. No convincing contentions were made as to why the amount be enhanced. In this view of the matter, I do not find any force in the appeal (No. 8/82) preferred by the State and also in the cross objections preferred by Smt. Shakuntla, both are accordingly dismissed.

9. As regards the case of Cpt. Gunwant Singh the learned counsel for the

claimants has submitted that the claimant had meritorious record of service and because of the injuries he would be disabled in discharging service properly. The chances of his further promotions are also reduced. It is submitted by Mr. Gupta that on account of various injuries sustained by Cpt. Gunwant Singh, he is entitled to a much higher amount. He has contended that on account of the injuries, Gunwant Singh's leg has become shortened and on account of fracture caused to his right hand he has developed disability to write. He has suffered permanent disablement on account of fracture of right ulna and compound fracture of right tibia and fibula. In the treatment a steel plate was inserted. On account of injuries and disabilities the claimant was put in the category of A-3 as per the statement of Dr. Sinha PW 4. Mr. Gupta has also submitted that the statement of Cpt. Gunwant Singh is categorical and that on account of the injuries, his chances of promotions are absolutely reduced. It is true that as per Ex. 7, which is the report of the Medical Board, the Board has advised the authorities concerned that Gunwant Singh should not be posted in hilly terrain and places of extreme cold. It has been also advised in the report that he is fit for sedentary duties which does not involve running about. The learned counsel, therefore, submitted that the amount of compensation awarded by the Tribunal is to be enhanced.

10. I have given my thoughtful consideration to the submissions made by Shri Gupta for enhancing the amount of compensation and the submission of the learned counsel for the State for dismissing the claims of the claimant. In view of the fact that number of injuries were sustained by the claimant Cpt. Gunwant Singh and that he has been advised not to be posted in hilly terrain and places of extreme cold and further advice of the Board that he should not to be given duties which involve running. He is entitled to just and reasonable compensation. In view of the fact that in Ex. 7, which is the proceeding of the Medical Board, it has been clearly mentioned that there is no shortening of the leg and that percentage of disability is nil, I am of the opinion that whatever the amount of compensation that has been awarded by the Claims Tribunal is fair and just. The learned counsel "referred number of authorities. I need not refer to them, as in all cases fracture of Tibia and or Fibula was involved which resulted into shortening of leg but in the instant case this fact is not there. Learned counsel referred to Devendra Raj Mehta Vs. Kanwar Sen and Others, which is a Division Bench judgment of our own High Court. That was a case of shortening of leg and a case of permanent disability. Therefore, the learned Division Bench has rightly enhanced the amount of compensation from Rs. 10,000/- to Rs. 40,000/-. In Pepsu Road Transport Corporation Vs. Satinder Sharma, Pepsu Road Transport Corp. v. Satinder Sharma, the claimant sustained fracture of humerus bone and 6-7 ribs, right Tibia and Fibula and there was shortening of left leg and left arm. In the opinion of the doctor injuries caused permanent disability and in those circumstances compensation was awarded. In this case as explained above, there is finding rendered by the Medical Board that there is no permanent disability and that there was no shortening of leg. Thus, the cases cited by the

learned counsel are distinguishable. The learned Counsel, Mr. Gupta, also referred to Sushila Pandey Vs. New India Assurance Co. Ltd. and Another, in support of his contention but it also does not help him, that it was a case of permanent disablement where body below the waist was paralysed.

11. In Appeals No. 8/82 and No. 9/82, the learned counsel submitted that the Court has awarded interest at rate of 6% from the date of application which is very low in view of the high rise in the price of the commodities. Even, he submits that Bank rate of interest is more than 12%. In view of the circumstances it will be proper if the rate of interest is increased from 6% to 9%. With this modification, the cross-objections are partly allowed.

12. In the result, appeal of both the appellants are dismissed and the cross objections are partly allowed, without any order as to costs.